

**Attorneys for Defendant  
WILLIAM RICHARD BAILEY**

UNITED STATES OF AMERICA,	)	<b>CASE NO. 13-CR-3046-CAB</b>
	)	
Plaintiff,	)	<b>REPLY IN SUPPORT OF DEFENDANT'S</b>
	)	<b>MOTIONS TO COMPEL DISCOVER</b>
vs.	)	<b>AND TO FILE FURTHER MOTIONS</b>
	)	
WILLIAM RICHARD BAILEY,	)	<b>Date: 26 March 2015</b>
	)	<b>Time: 9:30 AM</b>
Defendant.	)	<b>Courtroom 4C</b>

In the United States’ opposition to Dr. Bailey’s requests for the remaining disputed discovery items (Doc. 80), it asks: “How can discovery of the Source Code and System Documentation be material to his willfulness defense to prior years if he did not possess them?” See Doc. 80 at 3:17-19 (pg. 3, lines 17-19.) It then states that “Defendant has received the source codes and push codes in the discovery produced.” *Id.* at 3:19-20. Later, the United States identifies the source code and system information which Dr. Bailey requested as “CC AM 424”, see Government Exhibit 3, red circled “CC AM 424” at upper left of the document, and “Source Code 24”, see Affidavit of Revenue Agent John C. Parish (Government Exhibit 4) at ¶ 5.

*Reply In Support Of Defendant's Motions To Compel Discover  
And To File Further Motions*

1 the "Source Code" which Dr. Bailey identified and sought in his previous briefs to this Court.  
2 See, e.g., *Reply Memorandum Of Points And Authorities In Support Of Defendant's*  
3 *Second/Supplemental Motion For Discovery*, Section III (D), at p. 12-13 (Doc. 57, filed  
4 8/15/2014), and which included this description:

5 The "source code" (or equivalent) is a set of computer instructions in a format which is  
6 "human readable" and is contained in a "file" much as a Microsoft Word document is  
7 contained in a "file." Properly drafted source code often contains comments about why a  
8 particular command or command set is necessary to accomplish the objective sought to be  
9 accomplished by the computer that is using that source code (program set). Those comments  
10 could be particularly useful in showing the jury why the software was overridden and why  
11 the computer produced the false and erroneous records. The source code is used as input into  
12 a program called a "compiler" which then converts the "source code" into a format which the  
13 computer can read and follow and is called "compiled" code or "object" code.

14 In addition, Dr. Bailey requests that the govt provide the System Documentation for the  
15 programs used to generate IMF and TXMODA transcripts assigned to him for the years  
16 1998-2011. This will enable him to determine whether the source code was, in actual fact,  
17 implemented as stated in the IRM and Document 6209.

18 There is also a good description of source code on the Internet at this link:

19 [http://www.webopedia.com/TERM/S/source\\_code.html](http://www.webopedia.com/TERM/S/source_code.html)

20 Revenue Agent Parish also states, in reference to both IMF and TXMODA transcripts for  
21 2004, that each "transcript reflects that a 'SFR' was established for the year 2004, and a module  
22 was created." *Parish Affidavit* at ¶¶ 6 & 7, (Government Exhibit 4). Likewise, in ¶ 8, he states  
23 that "there is nothing in Bailey's motion or attachments indicating that any SFRs were  
24 improperly established for any year." Agent Parish addresses what each transcript "reflects." He  
25 says nothing about the manner by which such transcripts came into existence.

26 One of Dr. Bailey's core defenses, from the outset of this case, has been his claim that the  
27 IRS used fictional or fictitious entries into the Master File computer system in order to evade or  
28 circumvent the safeguards designed to prevent the IRS from determining and computing the tax  
deficiency for the year 1998.

Because the Government has stated repeatedly that it intends to use the Tax Court  
proceedings which resulted from the IRS 1998 deficiency determination as evidence of  
willfulness, motive, intent, etc., Dr. Bailey has a right to challenge the validity of the 1998  
deficiency determination and the ensuing tax court proceedings as having been obtained by such  
fictional or fictitious entries into the IRS computer system. By doing so, Dr. Bailey will be using

1 the evidence obtained from the source code to challenge and oppose the very evidence which the  
2 government intends to use to prove *willfulness*, etc.

3 In addition, the Ninth Circuit's *Manual of Model Criminal Jury Instructions* defines  
4 willfully as follows: "In order to prove that the defendant acted 'willfully,' the government must  
5 prove beyond a reasonable doubt that the defendant knew federal tax law *imposed a duty* on  
6 [him] [her], and the defendant intentionally and voluntarily violated that duty." (Italics added.)

7 Discovery of the source code will reveal that the Commissioner's computer procedures  
8 *do not impose a duty* on non-filers to file income-tax returns or pay income taxes. This evidence  
9 will rebut the willfulness component of IRC § 7201. Dr. Bailey could not have known of a *duty*  
10 which the Commissioner's own procedures demonstrate did not exist in 1998, nor does it exist  
11 today according to the same procedures.

12 Moreover, Dr. Bailey claims that discovery of the Master File computer program  
13 (human-readable "Source Code") will provide evidence which demonstrates that the  
14 Commissioner's computerized source code procedures support Dr. Bailey's claim that the taxes  
15 he is alleged to have evaded in 2004-2011 were not "*imposed by this title*," that is, not imposed  
16 by the Internal Revenue Code, Title 26, United States Code, an essential element of IRC § 7201  
17 (making criminal the evasion of "any tax *imposed by this title*") (italics added). See *United States*  
18 *v. Silkman*, 156 F.3d 833, 835 (8th Cir.1998) ("[W]hether a taxpayer is charged with tax evasion  
19 by willfully attempting to defeat the IRS's ascertainment of his tax liability, or by willfully  
20 attempting to evade the payment of a tax, the government must prove that the tax was in fact  
21 'imposed by this title,' in other words, a tax deficiency"). The evidence to be obtained from  
22 discovery of the source code is exculpatory and will support Dr. Bailey's defense to both the tax  
23 deficiency and willfulness elements of IRC § 7201.

24 Dr. Bailey does not claim that the United States may not impose taxes on his income.  
25 Rather, he claims that discovery of the Commissioner's computer program will provide evidence  
26 that the source code is executed consistent with the Commissioner's determination that the  
27 income taxes Dr. Bailey is alleged to have evaded were not, *in fact*, "*imposed by this title*." Such  
28 evidence is exculpatory and will serve to demonstrate to both the Court and the jury Dr. Bailey's

1 legal and factual innocence.

2 It is entirely possible that not all taxes imposed by the internal revenue *laws*, as opposed  
3 to taxes imposed by the Internal Revenue *Code*, are included in the *Code*. Congress appears to  
4 have provided a “catch-all” recognition of this fact at IRC § 7402 which vests authority in “the  
5 district courts of the United States . . . to render such judgments and decrees as may be necessary  
6 or appropriate for the enforcement of the internal revenue *laws*,” (italics added).

7 Dr. Bailey draws a distinction between taxes imposed by the tax *Code* and those taxes  
8 which may be imposed by revenue *laws* but not necessarily imposed by the *Code*. He does not  
9 claim to be “tax free,” “not subject to the tax laws”, or in any other manner exempt from tax  
10 obligations to which other Americans are subject.

11 The information to be obtained from the source code and system documentation is  
12 information which consists of **direct foundational evidence** upon which the government bases  
13 its allegations in this prosecution. Without it, Dr. Bailey cannot provide admissible evidence  
14 showing that the computer entries are either inadmissible or that they do not have any relevancy  
15 to his tax obligations, if any.

16 For the convenience of the government, Dr. Bailey limits his request for the computer  
17 source code to that segment of the Master File computer program which initiated the processing  
18 of Push Code 036 and ended when the IRS transcripts reflect the appearance of SFR 150. Said  
19 differently, he requests each and every step of the computer program in human-readable format  
20 from entry of Push Code 036 to and including the appearance of SFR 150 on both IMF and  
21 TXMODA transcripts. In terms of his 2004 transcripts, that would cover the entry of Push Code  
22 036 into the IRS computer system on or about August 20-31, 2005 through appearance of SFR  
23 150 on or about September 19, 2005.

24 Federal Rule of Evidence 901 (*Authenticating or identifying evidence*) (b)(9) (“*Evidence*  
25 *describing a process or system and showing that it produces an accurate result*”) provides that  
26 authentication or identification of a process or system requires evidence describing a process or  
27 system used to produce a result and showing that the process or system produces an accurate  
28 result. The advisory committee notes to Rule 901(b)(9) provide that the rule is designed for

1 situations in which the accuracy of a result is dependent upon a process or system that produces  
2 it. The notes also suggest that the rule is particularly adapted to such “recent developments” as  
3 the computer. The federal rule dictates that the inquiry into basic foundational admissibility  
4 requires sufficient evidence to authenticate the accuracy of the image and the reliability of the  
5 machine producing the image.

6 It is Dr. Bailey’s intention to use the evidence gained from discovery of the source code  
7 and system documentation to challenge the basic foundational admissibility of the IRS  
8 documents and records used in both the 1998 deficiency and tax court proceedings and in the  
9 case now before this Court.

10 Finally, the government states: “the IRS is not on trial in this case and its state of mind is  
11 completely irrelevant to any defense that Defendant may seek to raise.” Doc. 80 at 5:22-24.

12 Dr. Bailey’s defense is based solely on facts obtained and to be obtained from the  
13 discovery requested. The IRS is not on trial. To the contrary, Dr. Bailey’s defense relies largely  
14 on the *untainted* procedures which the IRS, through its Commissioner, has set in place to  
15 perform its duties. Those procedures are, to a large degree, to be found within the *untainted*  
16 source code and system documentation which Dr. Bailey has requested.

17 Where, as here, powerful exculpatory evidence supporting a defendant’s claim of  
18 innocence is to be found within the IRS’s own materials, Dr. Bailey is mindful that, “if counsel  
19 entirely fails to subject the prosecution’s case to meaningful adversarial testing, then there has  
20 been a denial of Sixth Amendment rights that makes the adversary process itself presumptively  
21 unreliable.” *United States v. Cronin*, 466 U.S. 648, 659 (1984).

22 It goes without saying that neither party nor this Court wishes to see an ongoing trial run  
23 into evidentiary difficulties where, as claimed here, it is determined that exculpatory evidence  
24 existed within the source code and system documentation, which would have “subject[ed] the  
25 prosecution’s case to meaningful adversarial testing”.

26 In summary, discovery of the source code, as defined herein and in previous briefs to this  
27 Court, will provide evidence which:

- 28
- Challenges the willfulness element of IRC § 7201;

- 1 • Challenges the tax deficiency element of IRC § 7201;
- 2 • Challenges the evidentiary foundation of IRS records, including the “poisonous fruit”
- 3 therefrom, such as the 1998 deficiency, tax court proceedings and Ninth Circuit’s
- 4 decision; and
- 5 • Will provide facts to demonstrate, both to the Court and the jury, Dr. Bailey’s legal and
- 6 factual innocence of the charges arrayed against him.

7 There exists no reasonable argument why this information cannot be provided by the  
8 government.

9 **B. REMAINING DISPUTED DISCOVERY ITEMS**

10 **1. Transcripts and exhibits from the grand jury convened in this court in or around**  
11 **July 2013, of witnesses other than Dr. Bailey who testified in regards to Dr. Bailey**

12 Dr. Bailey will defer this request until after he has received the remaining discovery  
13 items ordered by this Court.

14 **2. Transcripts and exhibits from the grand jury convened in this court in or around**  
15 **July 2013 of general instructions or advisements not related to any specific witness**

16 Dr. Bailey will defer this request until after he has received the remaining discovery  
17 items ordered by this Court.

18 **3. All reports of government agents, all recorded communications between Dr. Bailey**  
19 **and Receiver Robert Moser, all communications between government agents and**  
20 **Receiver Moser, and all other documents and/or reports of the government, not filed**  
21 **in the case (excluding attorney work product material) which are in any way related**  
22 **to the “Warehouse Bank” case, U.S v. Anthony L. Hargis, individually and dba**  
23 **Anthony L. Hargis & Co., Case No. SACV 04-00273 DOC (ANx.)(CD Cal.)**

24 Needed for impeachment of Government witnesses.

25 **4. Documents in the government’s possession showing that the contracting trusts and**  
26 **bailment trusts were identified in commerce by a number issued by the Department**  
27 **of the Treasury/IRS which designated them as having no filing requirements ( in**  
28 **fact the number indicated that they were common law entities)**

The government has offered to assist Dr. Bailey in locating materials which it has  
produced. If it can show him where this discovery item is located, he will be satisfied. He has  
been unable to locate it among the materials received.

1       **5. Documents reflecting, and copies of contracts without regard to any limitation the**  
 2       **government may place on the term including defining the “trusts” as only/purely**  
 3       **statutory**

4       The government states: “The United States objects to this request because internal  
 5       government documents are excluded from discovery under Rule 16(a)(2).” The government fails  
 6       to note that Rule 16(a)(2) is limited as stated therein:

7       *Information Not Subject to Disclosure.* Except as permitted by Rule 16(a)(1)(A)-(D), (F),  
 8       and (G), this rule does not authorize the discovery or inspection of reports, memoranda,  
 9       or other internal government documents made by an attorney for the government or other  
 10       government agent in connection with investigating or prosecuting the case. (Underline  
 11       added)

12       The *Notes of Advisory Committee on Rules—1974 Amendment* includes this sentence:  
 13       “The only proposed change is that the ‘reports, memoranda, or other internal government  
 14       documents made by the attorney for the government’ are included to make clear that the work  
 15       product of the government attorney is protected.” (Collecting citations.) But, Dr. Bailey does not  
 16       seek government attorney work product.

17       The government also states: “The Ninth Circuit decision affirming the tax court’s finding  
 18       on this issue should be collateral estoppel in this criminal case.” This is not legally correct. Dr.  
 19       Bailey intends to use the discovery items requested herein to challenge the validity of the 1998  
 20       proceedings, including his claim that both the tax court and Ninth Circuit decisions were tainted  
 21       by fabricated evidence and should not, therefore, be considered as “collateral estoppel in this  
 22       criminal case.”

23       The “fabricated evidence” exception to collateral estoppel allows a party, who can  
 24       establish that an official lied or fabricated evidence, to relitigate an issue with the falsified  
 25       evidence removed from the equation or, in cases involving intentional concealment of  
 26       exculpatory evidence, with the undisclosed evidence added back into the equation. See *Wige v.*  
 27       *City of L.A.*, 2013 U.S. App. LEXIS 7562, 8-9 (9th Cir. 2013); see also *Liston v. County of*  
 28       *Riverside*, 120 F.3d 965, 973 (9th Cir. 1997).

      In response to Item #18, the government stated: “Without the IMF and TXMODA files  
 for tax year 1998 (which contain the source and push codes (see Def. Suppl. Mot. at 2-7, 9), it is  
 impossible for Defendant to conclude that ‘false entries’ were made in the ‘computer code’ and



1 that the ‘source code’ safeguards were evaded. [Def. Suppl. Mot. at 12.]”

2 It is true that Dr. Bailey does not have and has not received the IMF (Specific) &  
3 TXMODA transcripts for 1998. However, he did receive the IMF (Complete) for 1998 and also  
4 has the admission of the IRS in the Tax Court that “a return under I.R.C. section 6020(b) was  
5 created for the Petitioner.” *Tax Court File*, WB-TAX-CT-FILE-000030 at p. 1, ¶ 1. In addition,  
6 Dr. Bailey is aware of the usual manner by which such IRC § 6020(b) returns (SFRs) are  
7 “created” by the IRS automated procedures.

8 The IMF (Complete) transcript contains the entry: “SFR 150 03142005” with  
9 accompanying DLN (Document Locator Number) “29210-888-00000-5”. See FOIA document  
10 provided by the government in early 2014, designated as “672 file Bailey.pdf” at Page 2 of 25  
11 (pdf pagination). The Internal Revenue Manual (IRM) identifies this particular DLN at IRM Part  
12 4. *Examining process* (definitions) as follows:

13 “For IMF returns, an SFR can be identified by a TC 150 with a DLN of XX-210-XXX-(000-  
14 299)-XX-X (paper SFR’s) or XX-210-888-000-XX-X for computer generated SFR’s using  
AM424 with Push Code 036.” [http://www.irs.gov/irm/part4/irm\\_04-004-001.html](http://www.irs.gov/irm/part4/irm_04-004-001.html)

15 The quote from IRM Part 4, immediately above, spells out very clearly that the SFR with  
16 DLN dated 29210-888-00000-5 is a “computer generated SFR[ ] using AM424 with Push Code  
17 036.” Dr. Bailey has briefed this Court and the government on his claim that such “computer  
18 generated SFRs” come into existence via fictional and fictitious computer entries into the Master  
19 File and other IRS computer systems in order to make the taxpayer’s IRS transcripts reflect that  
20 an SFR was created by the IRS under authority of IRC § 6020(b), when, in fact, the IRS never  
21 actually creates such returns. See, e.g., the Affidavit of Revenue Agent Parish at ¶ 8, where he  
22 declares: “there is nothing indicating a Form 1040A (or any other tax return) was filed by or on  
23 behalf of Bailey for any tax year.”

24 Yet, the 3rd, 4th and 5th digits of the DLN, above, are “210.” *Document 6209* (2015) (the  
25 document wherein IRS explains its computer codes), at p. 4-1, explains that the tax class consists  
26 of the third digit and the document code consists of the fourth and fifth digits of the DLN.  
27 [http://www.irs.gov/pub/irs-utl/6209\\_Section4\\_2015.pdf](http://www.irs.gov/pub/irs-utl/6209_Section4_2015.pdf)

28 *Document 6209* (2015), at p. 2-5, indicates that tax class “2” with document code “10”



1 pertains to Form 1040A. [http://www.irs.gov/pub/irs-utl/6209\\_Section2\\_2015.pdf](http://www.irs.gov/pub/irs-utl/6209_Section2_2015.pdf)

2 In the Tax Court proceedings for 1998, the IRS admitted that “a return under I.R.C.  
3 section 6020(b) was created for the Petitioner.” *Tax Court File, WB-TAX-CT-FILE-000030* at p.  
4 1, ¶ 1. This SFR “return” is encoded into the DLN for 1998, in the 3rd, 4th & 5th digits as “tax  
5 class “2”, document code “10” and, as noted, pertains to a Form 1040A. The same is true for the  
6 DLN for tax year 2004; it, also, contains “210” in the 3rd through 5th digits, reflecting that a  
7 Form 1040A exists.

8 Agent Parish notes that he has reviewed Dr. Bailey’s IMF and TXMODA transcripts for  
9 2004. See *Parish Affidavit* at ¶¶ 6 & 7. Yet, he declares that “there is nothing indicating a Form  
10 1040A (or any other tax return) was filed by or on behalf of Bailey for any tax year.” *Id.*, at ¶ 8.

11 The IRM states that a return must be posted before “Exam” (short for the IRS  
12 Examinations Division) can process a taxpayer’s account. IRM 3.12.179.14.1 (01-01-2014)  
13 (*General Information*) provides, in relevant part: “**All Doc Code 47 (Exam) and most Doc**  
14 **Code 54 (DP) Adjustment transactions require a return be posted.**”) (Bold in original)  
15 [http://www.irs.gov/irm/part3/irm\\_03-012-179r-cont01.html](http://www.irs.gov/irm/part3/irm_03-012-179r-cont01.html) “Exam” is the IRS division which  
16 conducts deficiency proceedings.

17 The IRS admission in Tax Court that “a return under I.R.C. section 6020(b) was created  
18 for the Petitioner” must be read in light of Agent Parish’s declaration that “there is nothing  
19 indicating a Form 1040A (or any other tax return) was filed by or on behalf of Bailey for any tax  
20 year.” True, the Tax Court admission refers to 1998, whereas Agent Parish refers to 2004.  
21 However, the DLNs for both years contain Tax Class “2” and Doc Code “10” indicating that a  
22 Form 1040A exists and was posted to that segment of the Master File assigned to Dr. Bailey.  
23 Push Code 036 is used to generate such DLNs, as noted above. Document 6209 states that Push  
24 Code 036 “[w]ill cause a TC 150 to post to Master File 1 cycle after input.” **Section 12 –**  
25 **Examination, Push Codes** at p. 12-16 [http://www.irs.gov/pub/irs-utl/6209\\_Section12\\_2015.pdf](http://www.irs.gov/pub/irs-utl/6209_Section12_2015.pdf)

26 *Document 6209, Section 8A - Master File Codes*, at p. 8A-8 (2015)<sup>1</sup>, provides two  
27

28 <sup>1</sup> [http://www.irs.gov/pub/irs-utl/6209\\_Section8A\\_2015.pdf](http://www.irs.gov/pub/irs-utl/6209_Section8A_2015.pdf)

1 explanations of the computer code “TC 150.” The first is for an “original return [which]  
 2 establishes a tax module.” Dr. Bailey had not filed an “original return” for tax year 2004 until  
 3 September 2008. In 2005, the IRS computers generated IMF and TXMODA transcripts  
 4 reflecting that an SFR had been established on or about September 19, 2005. That SFR was  
 5 generated by Push Code 036 *one cycle after* it (Push Code 036) had posted TC 150.

6 “Push Code 036: “Non-Filer: Will computer generate a substitute for return TC150 at Master  
 File 2 cycles after input. — Will cause a TC 150 to post to Master File 1 cycle after input.”  
 7 **Section 12 – Examination, Push Codes** at p. 12-16 [http://www.irs.gov/pub/irs-utl/6209\\_Section12\\_2015.pdf](http://www.irs.gov/pub/irs-utl/6209_Section12_2015.pdf)  
 8

9 **The TC 150 posted one cycle before the SFR TC150 was generated could not have**  
 10 **been Dr. Bailey’s “original return”; he hadn’t filed any return for 2004 during the 2005**  
 11 **timeframe when the SFR was generated on or about September 19, 2005.** The DLN  
 12 associated with the 2004 SFR appears in the format “XX-210-888-000-XX-X for computer  
 13 generated SFR’s using AM424 with Push Code 036.” [http://www.irs.gov/irm/part4/irm\\_04-004-](http://www.irs.gov/irm/part4/irm_04-004-001.html)  
 14 [001.html](http://www.irs.gov/irm/part4/irm_04-004-001.html)

15 It appears, then, that the TC 150 posted by Push Code 036 one cycle before the 2004 SFR  
 16 TC150 may have also been “computer generated.” It turns out that there is a second explanation  
 17 for TC 150 on page 8A-8 of *Document 6209* and sets forth three helpful explanations:

- 18 • Entity Created by TC 150
- 19 • Generated Transaction
- 20 • This TC 150 when posted to the Entity Transaction Section indicates the Master File  
 21 Entity was created from the posting of the return.

22 From this, it is apparent that the tax module was opened or “the Master File Entity was  
 23 created from the posting of the return.” What “return” was “posted”? Not Dr. Bailey’s “original  
 24 return.” No such return had been filed by him at that point in time. The IRS informed the Tax  
 25 Court that “a return under I.R.C. section 6020(b) was created for the Petitioner.” We also know  
 26 that Dr. Bailey had not filed an “original return” for tax year 1998.

27 If this Court is to accept that the IRC § 6020(b) for 1998 was, in actual fact, “created” by  
 28 the IRS and was used to open a tax module for that year, how is that possible, when *Document*

1 6209 clearly states that the SFR TC150 comes into existence one cycle *after* TC 150 has posted?  
2 Furthermore, Document 6209 clearly states that the “computer generated” TC 150 created the  
3 Master File Entity.

4 One IRS agent declares under penalties of perjury that Dr. Bailey’s 2004 transcripts show  
5 no evidence that the IRS created a Form 1040A or any other return for Dr. Bailey. Yet, assuming  
6 the 1998 IMF & TXMODA are substantively similar to the same 2004 transcripts, the Court is  
7 asked to accept the admission by an IRS attorney that the IRS did, in fact, create a “return” for  
8 Dr. Bailey for tax year 1998.

9 Finally, the DLNs for both 1998 & 2004 reflect that a Form 1040A exists. If it exists,  
10 perhaps the Court should order the prosecution to produce it as part of Dr. Bailey’s discovery. He  
11 has not asked for it previously, as he deemed it more appropriate to await receipt of the 1998  
12 IMF and TXMODA transcripts in order to identify it more accurately for both the Court and the  
13 government.

14 Dr. Bailey claims that full discovery of the items requested herein and such other  
15 discovery as may be needed and justified by these items will demonstrate that IRS never actually  
16 creates a return, SFR or otherwise, under IRC § 6020(b) for non-filers. Instead, it “games” the  
17 computer by fictional and fictitious entries into its computer databases in order to produce  
18 transcripts which “reflect” that an SFR was created under IRC § 6020(b).

19 This “fabricated evidence” makes possible the computer processes required to allow  
20 Exam to make changes to the nonexistent SFR return, compels the non-filer to either accept the  
21 deficiency or petition tax court to review the deficiency and, in most cases, suffer the imposition  
22 of a tax assessment despite the fact that the untainted IRS computer procedures would not permit  
23 either the deficiency or assessment proceedings to take place. One of the basic tenants of Dr.  
24 Bailey’s defense, and what he intends to show at trial, is that both the tax court and the Ninth  
25 Circuit decisions came about as a result of “fabricated evidence” and, therefore, come within the  
26 “fabricated evidence” exception to collateral estoppel and issue preclusion.

27 //

28 //

1 **6. Memorialization of agents' interviews with Dr. Dunnum reflecting that he supplied**  
2 **contract information and admonished agents in conversation and in writing not to**  
3 **conflate Dr. Bailey with the contracting trust.**

4 Dr. Bailey is satisfied with the government's response and promised action on this  
5 request.

6 **7. IRC § 6020(b) Assessment Case File (Tax Years 1998-present)**

7 Dr. Bailey narrows this request to the year 1998. The government does not state why it  
8 has not provided this item to the defense. This item will provide evidence of the fictitious nature  
9 of the 1998 deficiency and the improper use of the Master File computer system to obtain that  
10 deficiency. It will support his defense against the willfulness and tax deficiency elements of IRC  
11 § 7201.

12 **8. Individual Master File (IMF-Specific) for 1998**

13 Dr. Bailey is satisfied with the government's response and promised action on this  
14 request.

15 **9. TXMODA (Tax Module A) for 1998**

16 Dr. Bailey is satisfied with the government's response and promised action on this  
17 request.

18 **10. Every Deficiency Made Pertaining to Defendant**

19 The government stated: "Defendant's contention that the process used to compute the tax  
20 'illegally circumvented the Commissioner's safeguards and were not authorized' is a meritless,  
21 conclusory argument, which he has failed to support with any evidence." *Doc. 80* at 12:25-28.

22 Dr. Bailey limits this request to the deficiency for 1998. This item will be used to  
23 challenge the validity of the 1998 deficiency and tax court proceedings, in that the deficiency  
24 was based upon a fictitious SFR referred to by the IRS's admission that "a return under I.R.C.  
25 section 6020(b) was created for the Petitioner." *Tax Court File*, WB-TAX-CT-FILE-000030 at p.  
26 1, ¶ 1. This item forms an important piece of evidence to be used by the defense against the  
27 willfulness element of IRC § 7201 which is inextricably intertwined with those proceedings.

28 **11. Form 13496 for Tax Years 1998-present**

In response to this request, the government states: "the United States can provide

1 Defendant another copy or assist Defendant in obtaining copies of Form 13496 for tax year  
2 1998.” Dr. Bailey will be satisfied if the government provides a copy of this request for 1998.

3 **12. All Training Materials re: Items of Income “Excluded by Law”**

4 In response to this request, the government stated: “The items of income ‘excluded by  
5 law’ are defined in 26 U.S.C. §§ 101-140 (‘Items Specifically Excluded from Gross Income’).”

6 Dr. Bailey will be satisfied if the government will stipulate that IRC §§ 101-140 contain a  
7 complete list of items of income “excluded by law” as stated in both 26 CFR §§ 1.61-1(a) and  
8 1.61-2(a). If not, he repeats his earlier request as to this item.

9 **13. A List of All Items of Income “Excluded by Law”**

10 The government repeats its response to item #12; the defense repeats its reply to item  
11 #12.

12 **14. All Training Materials re: Non-Taxable Items under Constitution**

13 The government states, as to this request: “The United States Constitution does not  
14 contain a list of non-taxable income. As stated above, that information is contained in 26 U.S.C.  
15 §§ 101-140.”

16 Treas. Reg. § 1.312-6(b) refers to items of “income not taxable by the Federal  
17 Government under the Constitution.”

18 Dr. Bailey will be satisfied if the government will stipulate that IRC §§ 101-140 contain a  
19 complete list of all such items of income “not taxable by the Federal Government under the  
20 Constitution.” If not, he repeats his earlier request as to this item.

21 **15. A list of All Items of Income Not Taxable under the Constitution**

22 The government repeats its response to item #14; the defense repeats its reply to item  
23 #14.

24 **16. Copies of “IRC § 6020(b) Revenue Officer Training” Materials**

25 As to this item, the government stated: “Defendant has failed to articulate how this  
26 information is material to his defense.” Dr. Bailey explained his proposed use of this material in  
27 his brief titled *Materiality of Remaining Discovery Items* at pp. 11:21-12:11. (Doc. 77.)

28 //

**17. Records in Any and Every Format” Pertaining to Revenue Officer Training Course**

(Same as Item #16)

**18. Revenue Officer Training Manual, Lesson 23**

(Same as Item #16)

The government also stated that the Internet links Dr. Bailey provided did not work. Doc. 80 at p. 15, fn.2. Here are fresh links retrieved and operational on March 19, 2015: *Revenue Officer Training Manual*, Lesson 23 Re: IRC Section 6020(b)

<http://www.synapticsparks.info/evidence/c10/misc/Lesson23-3.pdf>

(referencing IRC § 6020(b) returns). See *Affidavit of John Turner*, former IRS Revenue Officer at <http://bit.ly/1KxUb35> (long-form link:

<http://famguardian.org/taxfreedom/Forms/Discovery/Deposition/Evidence/Q13.000.pdf>) ;

*Training Course, Table of Contents* at <http://bit.ly/1KxUqeC> (long-form link:

<http://www.synapticsparks.info/evidence/c10/index.html>)

The government further states: “The United States also objects to the production of documents that Defendant already possesses. It appears from his supplemental brief (see 11-12) that Defendant already possesses ‘Lesson 23’ as he cites to several website links where it can be obtained.”

It is true that Dr. Bailey has seen items 16-18 on the Internet, including the Affidavit of John Turner who claims to have been an IRS Revenue Officer, who also claims that he obtained these materials from the IRS during the course he alleges that he attended while with the IRS, and who states that he preserved them.

But, it is, of course, one thing to put before a jury materials gleaned from the Internet and quite another thing to be able to place the same items before the jury when those items have been provided to the defense by the IRS itself and to be able to inform the jury that the IRS had this material in its possession long prior to the 1998 proceedings in this matter. Therefore, copying them from the Internet will not provide to the jury the most crucial, impeaching and exculpatory element of this course, namely, that the IRS composed the course and taught it to its revenue officers at least 27 years ago, perhaps even longer, and yet, as the defense will allege, knowingly



1 violated the “constitutional issues” therein in Dr. Bailey’s case.

2       These items will impeach the admission by IRS Counsel Salel before the Tax Court that  
3 the IRS “[a]dmits that a return under I.R.C. section 6020(b) was created for the Petitioner.” *Tax*  
4 *Court File, WB-TAX-CT-FILE-000030* at p. 1, ¶ 1.

5       If, as Dr. Bailey believes and Mr. Turner’s Affidavit appears to bear out, the IRS had  
6 actually taught its revenue officers that IRC § 6020(b) returns were restricted to “employment,  
7 excise, and partnership tax returns because of constitutional issues,” and yet still claims that it  
8 created an IRC § 6020(b) tax return for Dr. Bailey for tax year 1998, this discovery will support  
9 his defense that the IRS knowingly entered improper, even fictitious, computer codes into his tax  
10 records in order to obtain a deficiency which the untainted IRS procedures would not allow. In  
11 addition, it will demonstrate to the jury that the IRS made misleading statements to the tax court  
12 concerning the validity of the 1998 deficiency proceedings and will allow Dr. Bailey to  
13 challenge the tax court and Ninth Circuit’s decisions as having been obtained by false  
14 representations made to both courts.

15       The discovery of these course materials will provide powerful, exculpatory evidence that  
16 at least some forces within the IRS have been aware for at least 27 years (John Turner states in  
17 his Affidavit that he took this course in late 1987) that the preparation of tax returns by the IRS  
18 under the authority of IRC § 6020(b) was limited to employment, excise and partnership returns  
19 because of “constitutional issues.”

20       Despite such awareness, unknown forces within the IRS appear to have engineered  
21 computerized procedures based upon entry of fictitious computer codes designed to expand the  
22 reach of IRC § 6020(b). IRS records are made to reflect that, under authority of IRC § 6020(b),  
23 IRS created a return (SFR) for a non-filer. Discovery of the items requested herein will  
24 demonstrate that IRS does not, *in actual fact*, create such returns (SFRs) for non-filers. Instead,  
25 IRS falsifies records by “gaming” the computers, i.e., by the improper and misleading  
26 application of legitimate computer procedures to false and illegitimate ends. End result:  
27 “doctored” records designed to deceive the non-filer, the legal profession, the courts and the  
28 public!

1 If discovery of these course materials confirms the substance represented by former  
2 Revenue Officer Turner, Dr. Bailey will seek discovery of the nature of the “constitutional  
3 issues” which restricted IRC § 6020(b) returns to employment, excise, and partnership returns.

4 While the IRS may not be on trial, Dr. Bailey has the constitutional right to confront the  
5 witnesses arrayed against him, including using the course materials to impeach the false claim  
6 that IRS prepared IRC § 6020(b) SFR returns on his behalf.

7 The Confrontation Clause “commands” that the reliability of testimonial evidence “be  
8 assessed in a particular manner: by testing in the crucible of cross-examination.” *Crawford v.*  
9 *Washington*, 541 U.S. 36, 61 (2004). In other words, the Confrontation Clause “reflects a  
10 judgment \* \* \* about how reliability can be best determined.” *Id.*

11 Dr. Bailey intends to use these course materials in the crucible of cross-examination of  
12 the government witnesses on the use of IRC § 6020(b) returns for 1998 and 2004. He also  
13 intends to use them to challenge the tax deficiencies determined and computed by Special Agent  
14 Morgan for tax years 2004-2011. They will be used to defend against both the willfulness and  
15 tax deficiency elements of IRC § 7201.

16 Lastly, the government stated, as to this item: “The United States requests reciprocal  
17 discovery of this material as it is in Defendant’s possession and he intends to use it at trial.”

18 Dr. Bailey has not completely formulated his defense strategy and is not, therefore, in a  
19 position to state what items subject to discovery he will use at trial. When he has completed his  
20 defense plans, he will supply the government with all materials subject to reciprocal discovery.

### 21 **19. Criteria Used by IRS to Ensure Compliance with *Murray’s Lessee***

22 As to this item, the government states: “Defendant has failed to articulate how this  
23 information is material to his defense.”

24 The government has stated elsewhere that “[t]he procedures for tax assessment and  
25 collection assigned by the First Congress to the Treasury Department were not invented by that  
26 Congress. Rather, they were adopted from the familiar procedures of English law and the laws of  
27 the States under the Articles of Confederation. See *Murray’s Lessee v. Hoboken Land & Improv.*  
28 *Co.*, 59 U.S. 272, 277-280 (1856) (tracing tax procedure from the English Court of the

Exchequer, to the States under the Articles of Confederation, and to the Federal Government in the early years of this Republic). See also *Bull v. United States*, 295 U.S. 247, 259 (1935) (summary tax collection procedures date to ‘[t]ime out of mind’).” *Kuretski v. C.I.R.*, No. 13-1090 (D.C. Cir. Sept. 26, 2013), *Brief of United States* at 42-43 <http://bit.ly/1gwXs5d>; See also *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 360 (1977) (Government affirmed that IRS procedures are “based upon *Murray’s Lessee*.”)

The procedures executed on the Master File and by means of the source code implemented on the IRS computer systems are subject to this same standard, as affirmed by the government to the Supreme Court in *G.M. Leasing*, *supra*, 429 U.S. at 360.

Dr. Bailey possesses partial, but not complete, evidence to support his defense that the untainted IRS procedures strictly comply with the standard stated in the government’s *Kuretski* brief. He also possesses partial, but not complete, evidence to support his claim that unknown forces within the IRS have contrived ways and means to taint the Commissioner’s procedures by fictitious entries and other schemes designed to trick or “game” the computer systems and thereby evade and circumvent the safeguards built into the source code or computer systems. These safeguards are meant to ensure that the procedures executed by the IRS computer systems comply with the standard set forth in *Murray’s Lessee* and enunciated by the government itself in its *Kuretski* brief.

If, as Dr. Bailey claims, discovery will provide sufficient evidentiary proof that the untainted procedures comply with *Murray’s Lessee* and the tainted procedures violate *Murray’s Lessee*, then he will have amassed sufficient evidence to seek to suppress all IRS evidence obtained or generated in violation of due process in the execution of its revenue procedures.

## **20. Individual Overseeing Procedures re: *Murray’s Lessee***

(Same as Item #19)

## **21. Individual Overseeing Computers re: *Murray’s Lessee***

(Same as Item #19)

## **22. Any and All Delegation Orders re: Form 1040 and IRC § 6020(b)**

The government neither confirms nor denies that it possesses any Delegation Orders

1 which authorize any IRS employee to prepare a Form 1040 or any variant thereof under the  
2 authority of IRC § 6020(b) on behalf of individuals who do not file income-tax returns.

3 If it possesses such Delegation Order, Dr. Bailey asks that this Court order the  
4 government to produce it. If not, Dr. Bailey will be satisfied to have the government deny that  
5 such Delegation Order exists.

6 **CONCLUSION**

7 For the foregoing reasons, Dr. Bailey respectfully requests that the Court order the  
8 government to produce the Defendant's remaining discovery requests as outlined herein.

9 Respectfully submitted,

10  
11 Dated: 19 March 2015

12 s/David M. Michael  
DAVID M. MICHAEL

13 Attorney for Defendant  
14 WILLIAM RICHARD BAILEY

15  
16  
17 **CERTIFICATE OF ELECTRONIC SERVICE**

18  
19 I hereby certify that, on 19 March 2015, I electronically filed the foregoing with the Clerk  
20 of the Court for the Southern District of California by using the CM/ECF system. I certify that all  
21 participants in the case are, or have applied to be, registered CM/ECF users and that service will  
22 be accomplished by the CM/ECF system.

23  
24 s/David M. Michael  
DAVID M. MICHAEL

25 Attorney for Defendant  
26 WILLIAM RICHARD BAILEY